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REMARKS/DISCUSSION OF ISSUES

Specification. In the Final Office Action, Examiner Phu objected to the amendment of Specification and Abstract filed on April 1, 2004, under 35 U.S.C. §132 as introducing new matter into the disclosure. The Applicant respectfully traverses this objection of the amendment of Specification and Abstract filed on April 1, 2004, for two reasons.

First, the added material of "an apparatus that avoids the necessity of using a computer for updating operation software within a storage device" and "The operation of the apparatus (1) depends on operation software contained in a storage device (45). It often appears to be necessary to update the stored operation software. For this purpose, update data contained in another storage device of another apparatus (50), of the same type as the apparatus (1), is tapped by the apparatus (1) for storage within storage device (45). This updating technique for the stored operation software has an application to portable cellular telephony apparatus." is supported by the original disclosure. Specifically, the original disclosure teaches "The invention finds relates to an apparatus of a certain type comprising a storage device for storing performance data. ... Such an apparatus is known from patent document PCT WO 97/35453. For updating or modifying the operation software of the apparatus, there is proposed in this patent document to utilize a PC type of computer, for example. The apparatus known from this document has the drawback that the use of such a computer may present difficulties and call for a certain infrastructure. For example, a server must be provided from which the information to be updated is obtained. Furthermore, one has to know how his update program is to be started. The present invention proposes an apparatus of the type mentioned in the preamble which avoids the necessity of using a computer. For this purpose, such an apparatus is characterized in that it comprises updating means for updating its storage device from another apparatus of the same type. A method of the type defined above is characterized in that said update data are tapped from another apparatus of the same type." See, U.S. Patent Application Serial No. 09/817,086 at page 1, lines 1-22.

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Clearly, the objective of the present invention is to eliminate the need for a computer to update or modify the operation software of an apparatus (e.g., a mobile telephone) as taught by PCT WO 97/35453 by providing updating means for updating the storage device of the apparatus from another apparatus of the same type (e.g., another mobile telephone). Thus, it is implicitly inherent that the present invention proposes an apparatus (e.g., a mobile telephone) which avoids the necessity of using a computer for updating operation software within a storage device of the apparatus. The amendment of the Specification and the Abstract filed on April 1, 2004, therefore does not add new matter to the original disclosure. See, MPEP §2163.07(a).

Second, the added material of "While the embodiments of the present invention disclosed herein are presently considered to be preferred, various changes and modifications can be made without departing from the spirit and scope of the invention. The scope of the invention is indicated in the appended claims, and all changes that come within the meaning and range of equivalents are intended to be embraced therein." is not new matter, because the aforementioned statement is not subject matter. Specifically, the aforementioned statement is nothing more than a reminder that the preferred embodiment is disclosed and the scope of the invention is defined by the claims. As such, there is no language in this statement by which the Applicant could draft limitations to add to an existing claim or to a new claim. Furthermore, there is no language in this statement by which an interpretation and a definition of the limitations and the terms of claims 1-7 has been broadened or narrowed.

Withdrawal of the objection to the amendment of Specification and Abstract filed on April 1, 2004, under 35 U.S.C. §132 as introducing new matter into the disclosure is therefore respectfully requested.

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Claims. In the Final Office Action, Examiner Phu rejected pending claims 1-7 on various grounds. The Applicant responds to each rejection as subsequently recited herein, and respectfully requests reconsideration of the present application under 37 CFR § 1.116.

- A. Examiner Phu rejected claims 1-7 under 35 U.S.C. §112, ¶1 as failing to comply with the written description requirement.

The Applicant respectfully traverses this rejection of claims 1-7 for the same reason herein the Applicant respectfully traversed the objection to the amendment of Specification and Abstract filed on April 1, 2004, under 35 U.S.C. §132 as introducing new matter into the disclosure. Withdrawal of the rejection of claims 1-7 under 35 U.S.C. §112, ¶1 as failing to comply with the written description requirement is therefore respectfully requested.

- B Examiner Phu rejected claims 1, 2 and 5-7 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,041,229 to *Turner*

The Applicant has thoroughly considered Examiner Phu's remarks concerning the patentability of claims 1, 2 and 5-7 over *Turner*. The Applicant has also thoroughly read *Turner*. To warrant this anticipation rejection of claims 1, 2 and 5-7, *Turner* must show each and every limitation of claims 1, 2 and 5-7 in as complete detail as is contained in claims 1, 2 and 5-7. See, MPEP §2131. The Applicant respectfully traverses this anticipation rejection of claims 1, 2 and 5-7, because *Turner* fails to disclose and teaches away from an updating of performance data within a storage device as encompassed by claims 1, 2, and 5-7.

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Specifically, *Turner* discloses an updating of configuration information (i.e., non-performance data) in the form of user-defined information and telephone identification information within a storage device. *See, Turner* at column 1, lines 10-20, column 2, lines 14 and 15; column 3, line 13 to column 4, line 45; and column 5, lines 51-54. Thus, *Turner* fails to teach or suggest "updating means for updating the operation software stored within said storage device via an interfacing with another apparatus of the same type" as recited in independent claim 1, "tapping update data from a second apparatus of the same type as the first apparatus to update the operation software in the first apparatus" as recited in independent claim 5, and "means for exchanging update data for updating operation software stored within a first apparatus, wherein a second apparatus communicates the update data to the first apparatus and the operation software stored within the first apparatus is updated with the update data" are recited in independent claim 7.

Withdrawal of the rejection of claims 1, 2 and 5-7 under §102(e) as being anticipated by *Turner* is therefore respectfully requested.

- C. Examiner Phu rejected claims 3 and 4 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,041,229 to *Turner* in view of U.S. Patent No. 6,285,916 to *Grant* et al.

Claims 3 and 4 depend from independent claim 1. Therefore, dependent claims 3 and 4 include all of the elements and limitations of independent claim 1. It is therefore respectfully submitted by the Applicant that dependent claims 3 and 4 are allowable over *Turner* in view of *Grant* for at least the same reason as set forth with respect to independent claim 1. Withdrawal of the rejection of dependent claims 3 and 4 under U.S.C. §103(a) as being patentable over *Turner* in view of *Grant* is therefore respectfully requested.

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SUMMARY

Examiner Phu's rejections of pending claims 1-7 have been obviated by the remarks herein overcoming the new matter rejection and supporting an allowance of claims 1-7 over *Turner*. The Applicant respectfully submits that claims 1-7 as listed herein fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing, favorable consideration and early passage to issue of the present application is respectfully requested. If any points remain in issue that may best be resolved through a personal or telephonic interview, Examiner Phu is respectfully requested to contact the undersigned at the telephone number listed below.

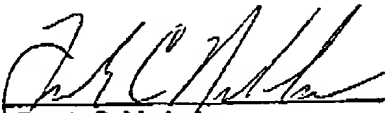
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